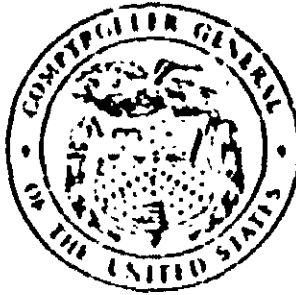


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-191902

DATE: August 17, 1978

MATTER OF: Joy Manufacturing Company

DIGEST:

1. Rejection of bid as nonresponsive because of information contained in unsolicited descriptive data was proper where IFB required inlet capacity of 2,750 CFM, bid form indicated 2,750 CFM but data listed capacity for model being offered as 2,600 CFM. Moreover, descriptive data could not be disregarded under ASPR § 2-202.5(f) because same model numbers showed sufficient perceivable relationship between data and bid.
2. Failure of bidder to supply average monthly operating and maintenance costs, where such costs are not used for bid evaluation and did not bind bidder, and therefore were merely for informational purposes only, does not require finding bid nonresponsive.

Joy Manufacturing Company (Joy) has protested the rejection of its bid submitted in response to invitation for bids (IFB) No. N00174-78-B-0042 issued by the Naval Ordnance Station, Indian Head, Maryland.

The IFB was for the furnishing of one air compressor and the contracting officer found the Joy bid, which was the lowest received, to be nonresponsive because of information contained in unsolicited literature enclosed with the bid. The unsolicited literature described performance specifications of various Joy air compressors. At page 25 of the bulletin, the inlet capacity of the Model TA-26 compressor being offered by Joy was listed as 2,600 CFM. The IFB required an inlet capacity or range of 2,750 to 3,200 CFM. While Joy's bid form indicated it would supply the Model TA-26 compressor with an inlet capacity of 2,750 CFM, the contracting officer determined that, because of the two conflicting figures, it was impossible to determine exactly what Joy proposed to furnish and therefore, rejected Joy's bid as nonresponsive.

Joy argues that the rejection was improper because its bid made clear it was furnishing a compressor with an inlet capacity of 2,750 CFM and that it only furnished the literature to show Joy's general experience in the compressor field. Moreover, it has been Joy's experience that the Model TA-26 compressor can easily handle inlet capacities in excess of 3,000 CFM. Finally, Joy contends that the literature submitted with its bid should have been disregarded by the contracting officer under section 2-202.5(f) of the Armed Services Procurement Regulation (ASPR).

The general rule with regard to unsolicited descriptive literature was stated in 49 Comp. Gen. 851 (1970), as follows:

"* * * In our view the intent of the bid must be determined from a reasonable construction of its entire contents including any unsolicited literature. If the circumstances are reasonably susceptible of a conclusion that the literature was intended to qualify the bid or if inclusion of the literature creates an ambiguity as to what the bidder intended to offer, then the bid must be rejected as non-responsive to the invitation for bids. See B-166284, April 14, 1969, May 21, 1969, and B-167584, October 3, 1969. As we stated in B-166284, April 14, 1969:

"The crux of the matter is the intent of the offeror and anything short of a clear intention to conform on the face of the bid requires rejection."

* * * * *

"When more than one possible interpretation may reasonably be reached from the terms of a bid a bidder may not be permitted to explain the actual meaning or bid intended since this would afford the bidder the opportunity to alter the responsiveness of his bid by extraneous material."

Based on the above, it is clear that, at the least, Joy's bid was ambiguous as to the inlet capacity being furnished. The fact that in its bid Joy indicated a capacity of 2,750 CFM does not alter the requirement that the entire bid including attachments must be considered in determining the bid's responsiveness.

ASPR § 2-202.5(f) (1977) reads as follows:

"(f) Unsolicited Descriptive Literature. If the furnishing of descriptive literature is not required by the invitation for bids, but such literature is furnished with a bid, it will not be considered as qualifying the bid, and it will be disregarded, unless it is clear from the bid or accompanying papers that it is the bidder's intention to qualify the bid."

Our Office has held that where the unsolicited literature contains information regarding the same model number of equipment being offered in the bid, as here, there is a sufficient perceivable intended relationship between the bid and the literature such that the literature may not be disregarded under ASPR § 2-202.5(f). Dominion Road Machinery Corporation, 56 Comp. Gen. 334 (1977), 77-1 CPD 89.

Accordingly, we find the contracting officer's rejection of Joy's bid to have been proper and it is

unnecessary to discuss the impact of the preprinted legend on Joy's literature to the effect that the design or construction of the machinery described therein could be altered by the company.

Joy also protests the finding of responsiveness by the contracting officer concerning the second low bid of Ingersoll-Rand Company, the only responsive bid submitted and argues that the IFB should be cancelled and, resolicited.

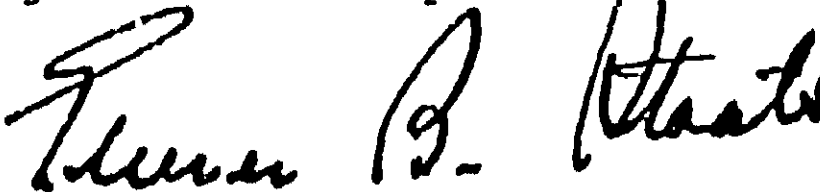
Amendment 2 to the IFB stated that:

"Based on the given design conditions provide the average monthly operating and maintenance costs for an approximate output of 102,744,000 CFM per month."

Ingersoll did not provide this information with its bid but the contracting officer found that it did not affect the responsiveness of the bid as it was merely a request for information, not an evaluation factor and had no impact on price, quantity, quality or delivery.

The above cited clause does not purport to bind a bidder to a particular course of action and the estimate, which played no part in the evaluation of the bids, was therefore for informational purposes only. The failure of Ingersoll to furnish the information with its bid does not render the bid nonresponsive. Concept Merchandising, Inc., et. al. B-187270, December 17, 1976, 76-2 CPD 505.

For the foregoing reasons the protest is denied.


Comptroller General
of the United States